

HUMAN SERVICES BOARD

INTRODUCTION

The petitioner filed her appeal in June 2008. By agreement of the parties the Department conducted a Commissioner's Review of the matter that lasted several months. When that did not fully resolve the matter, the parties agreed at a telephone status conference held on December 23, 2008 that the facts were not in dispute, that the Department would file a written motion for summary judgment within 30 days, and that the petitioner would file a written response and argument within 30 days of receiving the Department's filing. The Department filed its motion on January 23, 2009. To date, the petitioner has not filed any

response. The following findings of fact are based on the uncontested representations the parties have made and on documents they have filed to date.

FINDINGS OF FACT

1. On May 5, 2009 two Department licensing officials visited the petitioner's registered family day care home. While they were talking with the petitioner a preschool-age child approached the petitioner to complain that another child had pushed him and covered his mouth.

2. The licensors observed the petitioner harshly and loudly respond to the child: "Why didn't you yell to me or tell him to stop". The petitioner then ordered the child to go back into the playroom with the other child.

3. The licensors considered the petitioner's response to have been inappropriate in that the child had been complaining that the other child had covered his mouth, preventing him from crying out. They also felt the petitioner had been unduly harsh and loud in her response to the child, and that she had made no attempt to engage the child to ascertain his needs. The licensors specifically noted that the petitioner did not get down to "eye level" with the child.

4. The licensors also noted that they had spoken to the petitioner during a past visit about their concerns regarding the petitioner yelling at the children.

5. The petitioner does not specifically deny the licensor's version of the incident. She maintains that she has been "loud forever", that the children in her care respond well to that, and that the children's parents understand and approve of her methods.

6. The petitioner has submitted a letter (dated December 12, 2008) from the mother of one of the children involved in the altercation that day (although it is not clear which child). The parent was fully supportive of the petitioner raising her voice to her child because her child has special needs and is "not able to process a calm discussion reasoning him (sic) to stop an action".

ORDER

The Department's decision is affirmed.

REASONS

At the outset, it must be noted that this case does not involve a decision by the Department regarding the petitioner's day care registration. It is only whether the incident noted in the Department's Field Visit Report of its

inspection of the petitioner's facility on May 3, 2008 constituted a "violation" of the Department's family day care home regulations. If so, a notice of that violation is listed on the Department's web site for the public's information. (It should be noted that the Department's review of this matter resulted in several other violations noted on May 3, 2008 being resolved, and not being publicly reported.)

Section III(1) of the Department's Regulations for Family Day Care Homes provides:

The caregiver shall use positive methods of guidance/discipline which encourage self-control, self-direction, self-esteem and cooperation. Guidance/discipline shall be designed to meet the individual needs of each child. . .

Based on the uncontested facts in this matter, it must be concluded that the petitioner was in violation, however *de minimus*, of the above regulation. The fact that the regulation does not specify that it is inappropriate to yell at children does not render it vague or misleading to a reasonable day care provider.

Parents are, of course, free to judge for themselves what constitutes appropriate guidance and discipline for their children. However, it cannot be concluded that the Department is acting beyond its discretion to publicize, as a

guide to *all* parents, that the petitioner, on at least one occasion was observed to have unnecessarily yelled at a child in her care. This is especially so when, as here, the petitioner has essentially defended her actions as being one of style and differing philosophy, with no contrition or acknowledgement that she considers her discipline methods to be at all problematic.

Inasmuch as the Department's decision is supported by the evidence and constitutes a reasonable interpretation of its own regulations, it must be affirmed by the Board. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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